

FCC MAIL SECTION

DOCKET FILE COPY ORIGINAL Before the
Federal Communications Commission
Washington, D.C. 20554

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DISPATCH

In the Matter of

Second Periodic Review of the
Commission's Rules and Policies
Affecting the Conversion to
Digital Television

MB Docket No. 03-15

ORDER

Adopted: July 26, 2004

Released: July 28, 2004

By the Chief, Media Bureau:

1. The Media Bureau has received a request for waiver of the digital television ("DTV") simulcasting requirements in Section 73.624(f)¹ of our rules from NBC Universal, Inc which indirectly controls NBC Television network, and NBC Telemundo License Co. (collectively, "NBC"), on behalf of all NBC-affiliated stations, including NBC affiliates and all owned and operated stations (collectively, "NBC Stations").² As discussed below, we grant NBC's waiver request.

2. *Background.* Section 73.624(f) of the Commission's rules requires DTV licensees to simulcast 50% of the video programming of their analog channel on their DTV channel by April 1, 2003. This requirement increased to a 75% simulcasting requirement on April 1, 2004, and increases to a 100% requirement on April 1, 2005.³ The simulcasting requirement was intended to ensure that consumers enjoy continuity of free over-the-air video programming service when analog spectrum is reclaimed at the end of the transition. The Commission has stated that it may be difficult to terminate analog broadcast service if broadcasters show programs on their analog channels that are not available on their digital channels.⁴

3. In the *Notice of Proposed Rule Making* initiating the second periodic review of the transition to digital television, adopted January 15, 2003, the Commission sought comment on whether it should

¹ 47 C.F.R. § 73.624(f).

² See Letters from F. William LeBeau to Marlene H. Dortch, dated June 30, 2004 and July 14, 2004. NBC intends the waiver request to apply to all NBC affiliates as well as to NBC stations that are owned and operated by NBC's parent company, General Electric Company ("GE"). NBC states that it proposes a collective waiver on behalf of all NBC Stations in order to "limit the burden on Commission resources and serve the public interest." For the sake of administrative convenience and to avoid unnecessary burden on the individual stations and licensees, we will consider the waiver request from NBC as applying to all NBC owned and operated, as well as affiliated stations of NBC and NBC Telemundo.

³ 47 C.F.R. § 73.624(f)(i)-(iii).

⁴ *Fifth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd 12809, 12833, ¶ 56 (1997) ("*Fifth Report and Order*"), on recon., 13 FCC Rcd 6860, on further recon., 14 FCC Rcd 1348 (1998), recon. dismissed, DA 99-1361 (rel. July 12, 1999), recon. dismissed, FCC 00-59 (rel. Feb. 23, 2000).

retain, revise, or remove the simulcasting requirement.⁵ Among other questions, the Commission asked whether broadcasters have a market-based incentive to simulcast that makes a simulcasting requirement unnecessary.⁶ The Commission also asked whether the simulcasting requirement is causing broadcasters to forgo creative uses of digital technology, and whether something less than the ultimate 100% simulcasting requirement would be sufficient to protect analog viewers while allowing for innovation on DTV channels. The Commission also sought comment on how to define simulcasting, and whether the current dates for the phase-in of simulcasting requirements are appropriate. The *Second DTV Periodic Review NPRM* did not propose to reduce or eliminate the minimum digital operating requirements that are currently pegged to the simulcasting requirements.⁷

4. On April 29, 2003, the Media Bureau issued an *Order* granting noncommercial educational ("NCE") stations a six-month waiver of certain simulcasting requirements until November 1, 2003.⁸ We also stated that we would consider requests for waiver extensions from NCE stations on their individual merits if the Commission had not yet acted on the simulcasting issues raised in the *Second DTV Periodic Review NPRM* by November 1, 2003. The Media Bureau has granted several additional requests for waiver of the DTV simulcasting requirements to give stations additional time to acquire and install the facilities necessary to meet the simulcasting requirement,⁹ or to permit stations to experiment with innovative uses of the digital channel.¹⁰

⁵ *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Public Interest Obligations of TV Broadcast Licensees*, 18 FCC Rcd 1279 (2003) ("*Second DTV Periodic Review NPRM*").

⁶ *Id.* at 1302, ¶ 66.

⁷ To the contrary, the Commission proposed that, if the simulcasting requirements in Section 73.624(f) were reduced or eliminated, Section 73.624 would be amended to require DTV stations subject to the May 1, 2002, or May 1, 2003, construction deadlines to air, by April 1, 2003, a digital signal for an amount of time equivalent to 50% of the time they provide an analog signal. The digital signal must be aired during prime time hours. This minimum digital operating requirement increased to 75% on April 1, 2004 (requiring airing of a digital signal for an amount of time equivalent to at least 75% of the time the station airs an analog signal), and will increase to 100% on April 1, 2005. *Second DTV Periodic Review NPRM*, 18 FCC Rcd at 1303, ¶ 68.

⁸ *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television*, 18 FCC Rcd 8166 (2003) ("*Simulcast Order*"). In this *Simulcast Order* we found that, in light of the burden faced by NCE stations in complying with both the construction and simulcasting requirements at once, and in light of our pending re-evaluation of our simulcasting requirements, good cause existed to grant NCE stations a six-month waiver of the simulcasting requirements in Section 73.624(f).

⁹ See *Orders*, 18 FCC Rcd 22538 (2003) (granting a four-month waiver of Section 73.624(f) until March 1, 2004 to South Texas Public Broadcasting System, Inc. ("STPBS")); 18 FCC Rcd 24035 (2003) (granting six-month waivers of the simulcasting requirements until May 1, 2004 to three noncommercial stations in New Mexico); 19 FCC Rcd 7214 (granting an additional six-month waiver to STPBS until September 1, 2004).

¹⁰ See *Orders*, 18 FCC Rcd 8166, 8169, ¶¶ 8-10 (2003) (granting a waiver of the simulcasting requirements to Milwaukee Area Technical College ("MATC") pending issuance of a Report and Order in the Second DTV Periodic Review proceeding to allow MATC to simulcast the analog programming of its two NCE stations on one of its associated digital stations, and to use the other digital station to air high definition programming full time). See also *Orders*, 18 FCC Rcd 22531 (2003) (granting a waiver until issuance of an order in the Second DTV Periodic Review proceeding to permit Twin Cities Public Television, Inc. to simulcast the analog programming of both of its two NCE stations on one of its associated digital stations and to use the other digital station to air high definition programming full time); 18 FCC Rcd 22538 (2003) (granting a waiver of the simulcasting requirements to KTWU-DT pending the resolution of simulcasting issues in the Second DTV Periodic Review where the station was providing a wide sampling of innovative high-definition programming as well as a standard definition channel devoted to children's programming); and DA 04-1976 (rel. June 29, 2004) (granting a waiver of the simulcasting requirements to WNET-DT pending the resolution of simulcasting issues in the Second DTV Periodic Review

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5. *NBC Waiver Request.* NBC requests a waiver of the simulcasting requirements of Section 73.624(f) on behalf of all NBC Stations for the duration of its Olympic broadcast coverage, from August 13 to August 30, 2004, so that NBC Stations may have the choice to air NBC's HDTV Olympic programming stream ("HD Stream") in lieu of a digital simulcast of the station's analog programming. NBC states that its HD Stream will consist of unique high-definition programming that will include separate announcers, separate video, and comprehensive coverage of all major competitions. NBC argues that the waiver will allow NBC Stations to air innovative programming that will expand the public's interest in digital television. NBC notes that although the HD Stream will have its own "unique content," NBC Stations will also broadcast many of the same events as NBC's Olympic coverage on their analog channels.

6. NBC states that due to technical reasons, NBC Stations will not be able to transmit both the HD Stream and an "upconverted standard" version of NBC's analog programming simultaneously. NBC explains that many NBC Stations do not have the proper equipment to multicast digital programming.¹¹ NBC maintains that even if the equipment could be installed at every NBC Station within the month, the content-rich sports programming precludes multicasting because the station would be forced to "squeeze" the sports programming into a lesser quality digital format to accommodate the other simulcasting programming streams.¹² NBC argues that granting this waiver will enable every NBC Station to deliver the highest quality Olympic broadcast coverage, thus allowing viewers to experience innovative high-definition programming.

7. We find good cause to grant NBC a waiver of the simulcasting requirements in Section 73.624(f) from August 13 to August 30, 2004, to permit NBC Stations to broadcast the NBC HD Stream Olympic programming in lieu of digitally simulcasting their analog programming.¹³ By temporarily waiving the current rules, we are permitting NBC to experiment with innovative uses of high-definition programming and to offer unique digital programming to the community. In view of the continued pendency of the Second DTV Periodic Review proceeding and NBC's commitment to airing innovative digital programming, grant of the waiver requested by NBC is warranted.

8. The action we take today does not waive the existing rules regarding the minimum hours of operation on digital channels. Thus, NBC Stations subject to the May 1, 2002, or May 1, 2003, DTV construction deadlines must air a digital signal for an amount of time equivalent to at least 75% of the time they provide an analog signal. In addition, a digital video program signal must be aired during prime time hours. The minimum digital operating requirement for these stations subject to the May 1, 2002, or May 1, 2003, construction deadlines increases to 100% on April 1, 2005 (requiring airing of a digital signal for an amount of time equivalent to at least 100% of the time the station airs an analog signal).¹⁴ Stations, both commercial and NCE, that have been granted an extension of time to construct their DTV

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where the station was providing a 24-hour news, public affairs, science, and history program service, in lieu of its simulcast of WNET's analog signal).

¹¹ See Letter from F. William LeBeau to Marlene H. Dortch, dated July 14, 2004 at 2. To meet the simulcasting rule requirements more than 200 NBC stations must acquire and install the additional digital equipment, including a multiplexer and an encoder for each programming stream.

¹² *Id.* at 3. Each DTV Station has 6 MHz or approximately 19.4 Mbps of spectrum to transmit digital programming; this capacity must also be used for content other than video programming, for example audio or program data.

¹³ 5 U.S.C. §553(b)(3)(B). The Commission may waive its rules where good cause is shown. See 47 C.F.R. §1.3; *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

¹⁴ DTV stations subject to the May 1, 1999, and November 1, 1999, DTV construction deadlines (all network-affiliated television stations in the top thirty television markets) must operate their DTV station at any time their analog station is operating. See 47 C.F.R. § 73.624 (b).

facilities must comply with the minimum digital operation requirements in effect at the time the station commences digital operations.

9. **IT IS HEREBY ORDERED** that, pursuant to the authority contained in Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the Request for Waiver of Simulcasting Requirement filed on behalf of NBC Universal, Inc. **IS GRANTED** to the extent described herein.

10. This action is taken pursuant to authority delegated by Sections 0.61(h) and 0.283 of the Commission's rules, 47 C.F.R. §§ 0.61(h), 0.283.

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree
Chief, Media Bureau